

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Further Reform)	WC Docket No. 11-42
The Lifeline Program)	

COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”) pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby files these Comments regarding the recent Petition for Rulemaking (“Petition”) filed on behalf of the Lifeline Reform 2.0 Coalition (“Coalition”).¹

I. Introduction and Summary.

SBI operates as an ETC receiving high-cost and low-income support in Arizona, New Mexico, and Utah, providing service in both tribal and non-tribal lands. Within its service territory, SBI serves the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo tribal lands. Most of its tribal service territory is very sparsely populated (less than 10 persons per square mile) and economically challenging.² When SBI began its Lifeline outreach, the 2000 U.S. Census reported that less than 40% of Navajo households had access to a telephone.³ By 2011, Navajo household telephone penetration increased to 74.7%.⁴ The FCC’s policy of

¹ Public Notice, DA 13-1576, rel. July 15, 2013.

² See, e.g., SBI Petition for Waiver, WC Dockets No. 11-42 et al. (filed June 26, 2012) at p. 3; SBI ex parte notice, WC Dockets No. 11-42 and 03-109 (filed Dec. 15, 2011); SBI Comments, WC Dockets No. 11-42 and 03-109 and CC Docket No. 96-45 (filed April 21, 2011).

³ Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands, U.S. Government Accountability Office (Jan. 2006) at p. 13 and Fig. 3.

⁴ Selected Housing Characteristics, 2011 American Community Survey 1-year Estimates, Table DP04.

creating Tier 4 Lifeline support and encouraging carriers like SBI to reach out to remote areas was largely responsible for this significant increase in telephone penetration.⁵

SBI is supportive of the Commission's recent reforms to the Low Income program as well as the ongoing efforts by the Wireline Competition Bureau and the Universal Service Administrative Company to implement various components of those reforms. Since the adoption of last year's *Lifeline Reform and Modernization Order*,⁶ SBI has worked diligently and conscientiously to ensure full compliance with the rules and to help preserve the integrity of the program.

As part of these efforts, SBI has fully automated its subscriber enrollment process so that all retail locations utilize the same electronic data entry system. Customer contracts and certifications are immediately stored and accessible for internal or external audit purposes. This has enabled the company to facilitate the required disclosures and collection of additional data points and certifications, while also adding safeguards to ensure applications with missing certifications or data are not processed. As a result of its efforts to comply with the letter and spirit of the Low Income program rules, SBI's audit track record has so far been excellent, both before and after the Commission's reforms.

⁵ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Dkt. No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208 (2000).

⁶ *In the Matter of Lifeline and Link Up Reform et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*Lifeline Reform and Modernization Order*").

II. Discussion.

As SBI has argued previously, any further reforms to the Lifeline program should be addressed in a comprehensive fashion.⁷ There has been a recent trend in filing requests for rule changes, major and minor, to address issues that individual carriers or groups of carriers deem important. Without diminishing the importance of having an open process to consider timely solutions to real problems, this piecemeal approach is difficult for a small company to operationalize.

Some of the mini-rulemaking requests in recent months have sought changes that were already considered and rejected in a prior comprehensive rulemaking, and some seek to effectuate changes that are unnecessary in light of systems and processes that have been set up, or are in development, as a result of the reforms already adopted by the Commission. To avoid adopting rule revisions that interact poorly with other recently adopted rules and with rulemakings already under way, it is both more efficient and efficacious to address any serious concerns with the recently reformed Lifeline program as part of a comprehensive rulemaking.

To the extent that the Commission may be contemplating interim action, SBI provides the following comments for the Commission's consideration.

A. There Is No Demonstrated Need for Imposing New Regulations On Lifeline Providers At This Time.

The Coalition has failed to demonstrate a need for the Commission to further regulate the Lifeline enrollment and verification processes. The Commission has already adopted numerous measures to cut down on program abuse, including new rules requiring that customers present proof of eligibility at the time of enrollment, that all customers re-certify annually to their continued eligibility, that applicants read and sign a series of disclosures concerning restrictions

⁷ See, e.g., Letter from David A. LaFuria and Steven M. Chernoff to Marlene H. Dortch in WC Dockets No. 11-42 and 03-109 (June 4, 2013) at p. 1; SBI Comments in WC Docket No. 11-42 (filed June 17, 2013) at p. 3.

such as the one-per-subscriber rule, and that carriers obtain signed worksheets from applicants residing at the same address as another Lifeline subscriber.

The Commission has also set processes in motion to establish a Nationwide Lifeline Accountability Database (“NLAD”) to detect and eliminate duplicate Lifeline accounts, and has committed to establish a database for all ETCs to use in verifying consumer eligibility. According to Commission documents, reforms to the Low Income program resulted in more than \$200 million in programs savings in 2012, and are on target to achieve an additional \$400 million in 2013.⁸ When the NLAD and eligibility databases are established, significant additional savings should be generated. As the Coalition acknowledges, “the 2012 Lifeline reforms are working.”⁹

Notwithstanding this, the Coalition suggests more regulation to address program abuses, “whether real or perceived based on media accounts of the program.”¹⁰ SBI disagrees. To the extent the perception of waste and abuse by media outlets is a concern, this is a political problem that will not be solved by unnecessary regulation. Actual abuses to the program should continue to be addressed through audits and other oversight mechanisms administered by the FCC and USAC and, soon, by carriers subject to the biennial independent audit requirement. Reforms implemented to date have yielded tangible results, and they will continue to do so as carriers are subjected to audit authority and the national databases are implemented. In the meantime, the Commission should refrain from adopting piecemeal proposals that some carriers would

⁸ See FCC News Release, “FCC Reports: Major Reforms to Lifeline Program On Track to Cut At Least an Additional \$400 Million in Waste, Fraud, and Abuse in 2013; Reforms on Schedule to Save More Than \$2 Billion By End of 2014” (rel. Feb. 12, 2013).

⁹ Petition at p. 2.

¹⁰ *Id.*

advocate as a means of combating a perception issue, rather than efficiently and effectively solving actual problems within the program.

B. A Rule Requiring Applicants to Present Government-Issued Photo Identification Is Unnecessary and Would Prevent the Most At-Risk Consumers From Obtaining Lifeline Service.

The Coalition's proposal to require Lifeline applicants to show valid, government-issued photo identification would do little if anything to improve program integrity. Furthermore, such a requirement would do great harm by preventing many qualified low-income consumers from receiving affordable telecommunications service.

Requiring government-issued photo ID would not significantly help curb waste, fraud or abuse of the Lifeline program. The Coalition provides no reason to believe that applicants are providing other people's names and personal data on Lifeline application forms. Moreover, if this is a problem, it will be cleaned up when carriers begin accessing NLAD, which will perform identity verification in addition to identifying duplicates.¹¹

The types of fraud the Coalition discusses in its Petition relate primarily to ETCs signing up Lifeline customers without requiring proof of eligibility, without making necessary disclosures, and/or without obtaining required customer certifications. These practices are barred by the Commission's existing Lifeline reforms, and the solution is targeted auditing of the types of providers that engage in these practices. There is no record evidence of widespread use of identity theft by unqualified individuals seeking to obtain Lifeline service, and a photo ID requirement would not address any demonstrated problem.

¹¹ See Transcript of National Lifeline Accountability Database Webinar (June 2013), accessed at <http://usac.org/li/about/outreach/online-learning.aspx> ("In addition, the services of a third-party identity verification vendor will also be used to provide identity verification services to confirm the validity of subscriber data against public and governmental records.")

Furthermore, a photo ID requirement would have a punitive and chilling impact on Lifeline enrollment, particularly in Tribal communities. It is well documented that low-income individuals are far less likely to have government-issued photo ID than the general population.¹² Members of Tribal communities face particularly steep challenges to obtaining government-issued photo ID, often living great distances (sometimes over 100 miles) from state agencies that issue such identification.¹³ Many forms of photo ID require a birth certificate, which many Tribal residents do not have, and this adds more time and expense to an already burdensome and costly ordeal.¹⁴ Because of the significant portion of the citizenry in Tribal areas who lack government-issued photo ID, and because of the obstacles of obtaining such identification, requiring the presentation of government-issued identification as a precondition to enrolling for Lifeline would effectively disqualify many eligible low-income consumers, particularly the elderly and disabled. Accordingly, SBI urges the Commission to reject the Coalition's proposed photo ID requirement.

Should the Commission decide to adopt a photo ID requirement, any such requirement must contain an exemption allowing applicants in Tribal areas or near-reservation areas to present alternative means of identity verification, such as a utility bill, social security card, or benefits statement.

C. The Commission Should Permit ETCs to Retain Copies of Customer Eligibility Documentation, Subject to Privacy Safeguards.

¹² See Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification, Brennan Center for Justice at NYU School of Law (2006), accessed at <http://www.brennancenter.org/analysis/policy-brief-voter-identification> (noting that citizens earning less than \$35,000 per year are more than twice as likely to lack current government-issued photo identification as those earning \$35,000 or more, and that approximately 15% of those earning less than \$35,000 lack such identification).

¹³ See Voter ID Laws and the Native Vote: State of Concern, National Congress of American Indians at p. 4 (Oct. 15, 2012), accessed at http://www.ncai.org/resources/policy_papers/voter-id-laws-the-native-vote.

¹⁴ See *id.*

SBI would not object to a rule revision permitting ETCs to retain copies of customer documentation of eligibility.¹⁵ The rule revision would be a simple deletion:

§ 54.410 Subscriber eligibility determination and certification.

...

(b) Initial income-based eligibility determination. (1) Except where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline or using the income-based eligibility criteria provided for in § 54.409(a)(1) or (a)(3) an eligible telecommunications carrier...

~~*(ii) Must not retain copies of the documentation of a prospective subscriber's income-based eligibility for Lifeline.*~~

...

(c) Initial program-based eligibility determination. (1) Except in states where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's program-based eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based criteria set forth in § 54.409(a)(2), (a)(3) or (b), an eligible telecommunications carrier:

~~*(ii) Must not retain copies of the documentation of a subscriber's program-based eligibility for Lifeline services.*~~

Lifeline providers should have the option to keep copies of eligibility documents as a means of ensuring quality control within their systems and processes. Several providers commenting on the issue in previous proceedings, including members of the Coalition, have expressed support for allowing ETCs the option of retaining copies of such documentation.¹⁶ ETCs choosing to retain copies of eligibility documentation must be required to do so in a secure manner that protects customer privacy, consistent with CPNI requirements.¹⁷

SBI does not support a rule mandating that ETCs retain copies of such documentation. Such a rule could be unduly burdensome for small businesses, and in SBI's case it would be

¹⁵ See Petition at p. 6 ("ETCs Should Be Permitted to Retain Copies of ID and Proof of Subscriber Eligibility Documents.")

¹⁶ See, e.g., Comments of Absolute Mobile, et al. at p. 10 (filed June 17, 2013); Comments of Budget PrePay, Inc. at p. 6 (filed June 17, 2013).

¹⁷ See Petition at p. 7.

extraordinarily burdensome, coming on the heels of prior reforms. In the wake of the FCC's 2012 reforms, SBI completely overhauled its Lifeline enrollment, tracking, and verification systems and procedures to ensure full compliance with the revamped rules. The company worked with a vendor to fully automate its intake and verification processes so that enrollments in all field locations would use uniform data formats and information would be immediately retrievable, searchable, and verifiable. This automated process is specifically designed to comply with the FCC's new rules, including the requirement that customers present documentation of eligibility and that an ETC maintain accurate records of the data sources that were relied upon in making the eligibility determination.¹⁸

Changing the rules again to require that the customer's documentation actually be copied and stored by the company would require another complete overhaul of SBI's document collection and retention systems and procedures. The company would have to upgrade or replace its automated intake system to add a capability to scan eligibility documents, store them in a document management database, and archive them so they can be identified with customer accounts and accessed during internal and external audits. Further system upgrades would be necessary to add a capability to encrypt the scanned documents to ensure the security of confidential customer information. All told, SBI estimates that these changes and upgrades would cost the company a one-time equipment expenditure in excess of \$15,000 and ongoing costs of more than \$115,000 annually.¹⁹

For all these burdens, requiring the retention of customer eligibility documentation would add little in the way of ensuring program integrity. SBI knows this to be true, because its existing procedures have resulted in very few compliance problems. Essential to these results is

¹⁸ 47 C.F.R. §§ 54.410(b)(iii), (c)(iii).

¹⁹ This estimate includes equipment, licensing fees, and employee costs.

the company's ongoing and substantial investment in training its sales staff in compliance procedures, and not selling service through fly-by-night agents. SBI requires the presentation of eligibility documents, and requires sales staff to indicate, in a designated box on the application form, the type of documentation relied upon in making the eligibility determination for each applicant. Applicants are required to certify under penalty of perjury that they meet the eligibility criteria and that all of the information they have provided is accurate and correct. SBI's training procedures, training materials, and application forms are all subject to review in USAC or OIG audits, as are its quality control procedures.

Moreover, the Commission's 2012 reforms included a commitment to develop a capability for Lifeline providers to verify customer eligibility using a database. Specifically, in the *Lifeline Reform and Modernization Order*, the Commission directed the Wireline Competition Bureau and USAC "to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline."²⁰ Once a database is in place, any document retention rule would be mooted as document review and collection would be unnecessary.

In light of the customer certifications under penalty of perjury and the requirement that the company maintain records concerning the documentation reviewed in each enrollment, there would be little if any benefit to requiring the storage and archiving of the actual customer documentation. In addition, any benefit of retaining scanned documents will be further diminished, if not eliminated altogether, when an eligibility database becomes available. Accordingly, the Commission should not make such document retention mandatory.

²⁰ See *Lifeline Reform and Modernization Order* at ¶ 403.

III. Conclusion.

SBI respectfully requests the Commission to allow the existing reforms to work, to continue to conduct targeted audits, to gather data, and to implement further reforms only if there is a demonstrable need, and preferably after the NLAD is implemented. A set of calibrated and orderly reforms will improve program compliance.

Respectfully submitted,

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August 14, 2013